

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SCORPIO A.,

Claimant,

and

SAN GABRIEL/POMONA  
REGIONAL CENTER,

Service Agency.

OAH Case No. L 2006080495

**DECISION**

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Pomona, California, on January 19, 2007.

Daniela Martinez, Fair Hearing Program Manager, San Gabriel/Pomona Regional Center (Regional Center or Service Agency), represented Service Agency.

Claimant was present and was represented by Paul Hernandez.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

**ISSUE**

Is Claimant eligible for Service Agency services by reason of a developmental disability within the meaning of the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)?

**FINDINGS OF FACT**

1. Claimant is 19 years of age and a ward of the juvenile court. Since February 2006, he has resided at the Heritage Group Home, a group home with six residents.

2. He became a ward of the court in February 1992, at age four, after his mother failed to provide basic necessities of life and kept him locked in a closet. His father could not be located by Los Angeles County Department of Children and Family Services (DCFS).

3. Claimant's first group home, Hillside Home for Children, sought an eligibility determination from the Frank D. Lanterman Regional Center (LRC), primarily because of his speech delays and adaptive skills deficits. LRC staff psychologist Janet Wolf, Ph.D. (Wolf), performed a psychological evaluation on April 28, 1992.

Dr. Wolf noted the following history, as reported by a DCFS social worker. Claimant lived with his father until he was four years old. His father and grandmother physically abused him and kept him locked in a closet for periods of time. His father left Claimant in the care of Claimant's mother, who was reported to be emotionally-disturbed or cognitively-delayed. Claimant's mother also locked him in a closet for unspecified periods of time. DCFS was alerted by neighbors who heard Claimant's screams. No prenatal, neonatal, or early development history was available to Dr. Wolf.

Dr. Wolf administered the Stanford-Binet Intelligence Scale, Form L-M (Stanford-Binet), the Leiter International Performance Scale (Leiter), the Peabody Picture Vocabulary Test-Revised, Form L, and the Vineland Social Maturity Scale tests. She attempted to administer the Developmental Test of Visual-Motor Integration, but Claimant refused to complete it. During the evaluation, as reported by Dr. Wolf, Claimant smiled reciprocally and was verbally interactive and charming. His articulation was difficult to understand and his language was limited. Receptive language was estimated to be equal to that of a three-year-old.

Cognitive performance in the Stanford-Binet fell in the low borderline range, with an intelligence quotient (IQ) score of 70. Because verbal skills were significantly more delayed than nonverbal skills, Dr. Wolf administered the Leiter, a nonverbal test of abstract reasoning. He scored an 88 in the Leiter, a number in the low average range, which Dr. Wolf opined was more reflective of Claimant's actual ability. Using the Vineland Social Maturity Scales, Dr. Wolf concluded that Claimant was functioning in the mildly subnormal range of social-adaptive skills. He showed no interest in toilet-training. He was aggressive toward other children, which included biting them, and showed no remorse or empathy for his behavior. He wandered off with no apparent regard for his safety. Claimant demonstrated little sense of appropriate limits and a lack of response to verbal commands or limit-setting.

Dr. Wolf diagnosed Claimant as suffering from post-traumatic stress disorder, chronic, and developmental articulation disorder. She estimated his cognitive potential in the low average range. Expressive and receptive language deficits, and those in social-adaptive skills, were attributed to past abuse and neglect. Dr. Wolf recommended continued educational services to address behavior problems and speech and language delays.

4. On July 20, 1992, LRC denied eligibility because Claimant did not have a substantially handicapping developmental disability.

5. On July 7, 1992, H. Keith Massel, Ph.D. (Massel), performed a psychological assessment at the request of Claimant's new group home, Westside Group Home. Claimant had a full scale IQ score of 65 in the Wechsler Preschool and Primary Scale of Intelligence, Revised, which Dr. Massel noted was "in the mild range of mental retardation." Verbal skills subtest results ranged from the "mentally deficient" to the average range. Performance skills subtests also showed areas of relative weakness. Deficits in the Object Assembly, Geometric Design, and Mazes indicated, in Dr. Massel's opinion, deficits in visual-motor organization abilities, eye-hand coordination, and, especially, in planning activities.

Overall adaptive skills, as measured through the Normative Adaptive Behavior Checklist, were in the lowest, or first, percentile. Deficiencies were identified in each of the tests' six domains of adaptation. Thus, Claimant was unable to do any items in the home living category, which included setting a table with plates, glasses and silverware, and unlocking a door with a key. In the self-help skills domain, Claimant was able to peel a banana or orange without crushing it, snap his pants, and brush his teeth, but was unable to control his bladder from morning to bedtime, unzip his pants to the bottom of the zipper, or wash his face. In terms of social skills, although Claimant was able to look at the speaker in the face during a conversation and to state his name and age, he was unable to state his full name, cut paper with scissors, or draw a recognizable one color picture with a crayon. Sensory-motor skills deficits included not being able to walk upstairs without using the handrail, throw a hand-sized ball overhand at least five feet toward a target, or catch a ball four out of five times from ten feet away. Deficiencies in language concepts/academic skills included the inability to identify objects that are different, count the numbers one through ten, or identify his left from his right.

Dr. Massel diagnosed Claimant with Attention-Deficit Hyperactivity Disorder and Mild Mental Retardation. He noted multiple foster home placements as a severe psychosocial stressor. Dr. Massel recommended a complete neurological evaluation, a good behavioral program, stable home placement, a pre-school program for the developmentally delayed, speech therapy, and a follow-up psychological assessment.

6. Claimant has received special education services, which have included periodic psychological evaluations. On June 14, 2000, Patricia D. Worden (Worden), School Psychologist, prepared a psychoeducational report for the Hacienda La Puente School District (District). At the time of the evaluation, Claimant had been found eligible as an "emotionally disturbed" student and District was paying for Claimant to attend fifth grade at Quest Academy, a private school.

Administration of the Wechsler Intelligence Scale for Children – III, revealed full scale IQ results of 86 (83 in verbal IQ and 80 in Performance IQ), which placed him in the low average range. Some of the subtest results fell below average; of particular concern were scores in the areas of vocabulary and commonsense social reasoning (verbal subtests) and ability to note and sequence visual social detail and abstract spatial reasoning (performance subtests). Academic achievement, measured at the level of fourth grade, was generally commensurate with cognitive ability. Results of projective and story-telling testing indicated

that Claimant was still dealing with the effects of abuse and neglect and that such may color the way he related to others around him. Worden recommended continued special education services under the emotionally disturbed eligibility condition.

7. The next triennial school evaluation was reported on May 9, 2003, based on an evaluation performed by School Psychologist Carey Twitchell (Twitchell). Claimant was attending ninth grade at Los Altos High School, and his classes were held in a sheltered, structured classroom for emotionally disturbed students. Cognitive ability was again measured in the low average range, with a full scale quotient of 88. Academic achievement was measured in the low average to borderline ranges, with results in mathematical reasoning and writing skills falling in the borderline range. Claimant had difficulty with visual motor tasks, which the evaluator attributed to the effects of prenatal exposure to unidentified toxins.

Claimant's teacher, Galarze, provided information for the completion of the Vineland Adaptive Behavior Scales: Classroom Edition (Vineland, Classroom Edition) and the Behavior System for Children (BASC). Twitchell interpreted the results obtained through the Vineland, Classroom Edition as not commensurate with Claimant's cognitive ability. The Communication Domain score of 63 was in the low range, while those in the Daily Living Skills Domain and Socialization Domain, 57 and 55, respectively, were determined to be in the deficient range.

The BASC is an integrated system designed to facilitate the classification of a variety of emotional disorders. Twitchell identified a number of "at-risk," or problem areas, in several categories. In her opinion, the results disclosed potential behavioral problems due to lack of maturity or odd behavior.

Because of the BASC results, Twitchell administered two tests pertaining to autism spectrum disorders, the Childhood Autism Rating Scale (CARS) and the Asperger's Syndrome Diagnostic Scale (ASDS). With Galarze as the reporter, Twitchell found evidence of autistic behaviors in both instruments. Twitchell derived a total score of 31.5 in the CARS, which she interpreted as constituting mildly autistic behaviors (a score higher than 30 is deemed positive). With respect to the ASDS, Twitchell concluded as follows: "A review of records indicate that Scorpio has a longstanding history of impairment in social interactions, peculiar motoric mannerisms, refusal to eat specific foods, becoming upset when routines are change[d] and sensitivity to touch and sounds. Scorpio also has specific obsessions such as Pokemon, science and puzzles. Scorpio has severe needs in the areas of daily living skills, receptive communication, and socialization. These scores indicate the strong possibility that Scorpio has Asperger's Syndrome."

Twitchell recommended continued services under the emotionally disturbed classification. She also recommended that the Individual Education Plan (IEP) team consider adding a qualifying condition by reason of Claimant's "autistic-like behaviors."

8. Claimant continued to attend a special education classroom at Los Altos High School until the end of the 2004-05 school year. The qualifying condition remained emotionally disturbed. Because of a move in his foster home location, Claimant started his twelfth grade in a new school, Cortez School in West Covina, which was part of the Eastern San Gabriel Valley Special Education Local Plan Area, Los Angeles County Office of Education (LACOE).

9. Claimant also had to deal with a personal loss and an unstable home environment after the foster parent with whom he had been for at least five years died. He resided in three foster homes after the start of the school year at LACOE. The last placement is his current home.

10. In the first IEP at the new school location, prepared after a meeting on October 6, 2005, team members continued to provide services under the emotionally disturbed eligibility criteria, but noted the possibility of Asperger's Syndrome. Career education was added to other educational supports. The team planned to move Claimant to a less-restrictive special day class in Charter Oak High School, where he would be able to interact with non-special education students during physical education, lunch, breaks, and special activities.

11. Claimant's transition to the Charter Oak High School was short-lived. He had difficulty functioning in the classroom, displaying non-compliance, often by resisting direction, by arguing, or by simply refusing to participate in class. During unstructured breaks and lunch, Claimant spent time in the library and in the cafeteria. He liked to help in both places, but was asked not to continue to help after he took surplus books and left-over food. He returned to Cortez after less than one semester at Charter Oak.

12. Susan Lacoff (Lacoff), a career education and transition specialist, has been working with Claimant since his arrival at Cortez School. She seeks to provide pre-employment and work experience. Claimant requires supervision and has been unable to perform simple tasks with supervision. He tends to wander off and disregards instructions. For example, he was assigned to deliver lunch bags with another student and was suspended after he accepted offers for lunch despite an express prohibition against such gifts. Because the need for constant supervision, Lacoff does not think Claimant is ready for work experiences away from the sheltered environment of Cortez School. She placed Claimant in a workshop where she hopes he will learn vocational skills. In addition to receiving instruction on basic work skills, Claimant will be evaluated on his ability to interact with others and on his ability to safely perform tasks.

13. Lacoff provided additional observations about Claimant's behavior. Claimant stays by himself most of the time. He has difficulty reading social cues, as he is overly attentive to the conversations of others and at times interrupts them. He becomes agitated at changes in routine. He is hypersensitive to loud noises. He neglects his personal hygiene. He enjoys hobbies, such as computer games, which may keep him from important tasks such as homework and personal grooming.

14. John Williams is a unit manager at Heritage Group Home. He testified that Claimant does not always follow instructions, particularly those involving personal hygiene and home chores. Claimant does not like to bathe, make up his bed, or perform other assigned tasks. Claimant may help others with their assigned chores, but does not perform those assigned to him. Claimant is distracted by reading comics and by playing computer games, to the point of neglecting hygiene and chores. Whereas other residents spend at least some of their allowance on practical things such as clothing, Claimant spends his entire allowance on comics or videogames. Claimant stays by himself and refuses to participate in group activities. At times, his refusals to go play basketball cause all residents to stay at home because the home's staff cannot always supervise residents at two locations. When he does agree to go to the gym with the others, Claimant stays by himself playing his videogame.

15. Lacoff referred Claimant to Service Agency for evaluation in light of the reported autistic behaviors and his continuing school difficulties. Service Agency staff conducted an intake interview, and ordered medical records and a new psychological evaluation.

16. Lisa M. Doi, Ph.D. (Doi), performed the psychological evaluation on June 14 and July 5, 2006. Dr. Doi interviewed Claimant, observed him in her office, and administered the Wechsler Adult Intelligence Scale – Third Edition (WAIS-III), the Wide Range Achievement Test – Revision 3 (WRAT3), the Autism Diagnostic Observation Schedule – Module 4 (ADOS), and the Vineland Adaptive Behavior Scales (Vineland). Claimant was cooperative and compliant during the interview and testing, and Dr. Doi believes the tests reflect his current level of functioning.

Cognitive functioning was assessed to be in the low average range through use of the WAIS-III, with a full scale score of 85, a verbal score of 88, and a performance score of 84. Minimal subtest scatter was observed and no relative strengths or weaknesses were detected. Academic functioning, as measured through the WRAT3, was in the low average range for reading and in the average range for spelling and arithmetic. Claimant demonstrated the ability to identify words at the seventh-grade level and correctly spelled high-school-level words. In arithmetic, he exhibited the ability to multiply and divide multi-digit numbers as well as to solve computations involving the use of exponents, fractions, and decimals.

Adaptive behavior was assessed through the Vineland, with Brandye Washington, facility manager of the Heritage Group Home, and Lacoff providing the information. In the communication domain, Claimant was assessed in the borderline range of functioning. Mild deficits were identified in the daily living skills and socialization domains. Of note, while Claimant can perform many routine and simple daily living tasks, such as bathing and preparing simple meals, he needs reminders regarding personal hygiene. He was reported to be a loner who avoids group activities. He hoards food and collects various things in his room. He displays low tolerance for frustration and responds in an aggressive manner. Dr. Doi was of the opinion that Claimant's socio-emotional difficulties are likely the result of abuse as a child; these difficulties appear to have negatively impacted his ability to exhibit age appropriate levels of adaptive functioning.

After administering the ADOS, Dr. Doi concluded that Claimant scored below the Autism spectrum cut-off range in the areas of communication and social interaction. Her interaction with him revealed good eye contact and the ability to engage in reciprocal conversation. There was no history of echolalia or other oddities of speech and she did not note any during her evaluation. Although Claimant has demonstrated a tendency to hoard food, no longstanding preoccupations or obsessions were reported. There was no history of routines, rituals, repetitive motor mannerisms, or a preoccupation with parts or objects. Dr. Doi concluded that Claimant did not have a diagnosis in the Autism spectrum.

Dr. Doi agreed with the prior diagnoses of Abuse of Child, Neglect of Child, and Post-Traumatic Stress Disorder, but concluded that Mental Retardation, Autism Disorder, Asperger's Disorder, or Pervasive Developmental Disorder Not Otherwise Specified were not appropriate diagnoses. She concluded that continued mental health treatment diagnosis and treatment would be appropriate for Claimant.

17. Claimant has no known history of seizures.

18. Claimant has been attending bimonthly individual and group therapy sessions since 1996. His therapist, Phillip D. Snyder, Ph.D., wrote on February 20, 2002, that Claimant's diagnosis was Bipolar Disorder with Psychotic Features. Claimant's symptoms included moderately depressed mood, emotional lability, anxiety, impaired sensorium, and moderate hyperactivity. Claimant has displayed oppositional and defiant behaviors. His condition required two inpatient hospitalizations in 2001.

19. Claimant is also under the regular care of a psychiatrist, Steven Seager, M.D., who has prescribed Depakote 250 mg, Seroquel 200 mg, Methylin 20 mg, and Lexapro 10 mg.

20. Service Agency concluded that Claimant did not have a qualifying developmental disability. As explained by Dr. Langenbacher, Claimant has consistently scored above the IQ score of 70 required for a diagnosis of mental retardation or for a condition closely related to mental retardation. There was no indication of a qualifying medical condition like epilepsy or cerebral palsy. Claimant did not display the type of repetitive behaviors typically associated with autistic individuals. His communication and socialization deficits were more consistent with a mental health diagnosis than with autism. Service Agency recommended continued treatment of Claimant's emotional problems.

21. By letter dated July 27, 2006, Service Agency informed Claimant's social worker of its decision. On August 15, 2005, Claimant filed a fair hearing request. The matter was continued on two occasions, and on September 26, 2006, Claimant, through an authorized representative, executed a Waiver of Time Set by Law for Lanterman Act Fair Hearing and Decision.

## LEGAL CONCLUSIONS

1. In order to be eligible to receive services from a regional center, a claimant must have a developmental disability, which is specifically defined as “a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.” (Health & Saf. Code, § 4512, subd. (a).)

2. In this case, no argument or evidence was presented to establish that Claimant has cerebral palsy or epilepsy.

3. Claimant’s cognitive ability has been consistently tested in the low average range, much higher than the level required for a diagnosis of mental retardation. Academic achievement and adaptive behavior have also been consistently measured in a mild deficit range consistent with his measured cognitive ability. Areas of relative strength in non-verbal performance indicate Claimant does not suffer from the global deficits typically associated with mental retardation.

Dr. Massel did report a full scale score of 65. However, the reliability of this score is questionable in light of the others that consistently place Claimant’s ability at a higher level and in light of Claimant’s circumstances at the time of Dr. Massel’s evaluation. Claimant had recently been the victim of abuse and was still aggressively acting out toward those around him. In approximately six months preceding the evaluation, he had been removed from his mother’s custody and had lived in three separate group homes. Except for Dr. Massel, no other evaluator derived a mental retardation diagnosis.

The evaluations of Drs. Wolf and Doi are more persuasive. Although conducted approximately fourteen years apart, both experts arrived at similar conclusions regarding Claimant’s cognitive ability. Their opinions regarding Claimant’s cognitive functioning have been corroborated by intervening school evaluations. The evidence therefore establishes that Claimant’s cognitive ability is in the low average range, higher than that required for a mental retardation diagnosis.

Accordingly, it was not established that Claimant is mentally retarded.

4. Claimant’s relatively high IQ and adaptive functioning also rule out conditions closely related to mental retardation or that require treatment similar to that required for individuals with mental retardation. As Dr. Langenbacher testified without contradiction, cognitive ability must be in the borderline range or lower and greater adaptive behavior deficits must be present to establish disability through this “fifth category.”



5. Claimant's representative did not argue for eligibility on the basis of mental retardation or related conditions. Rather, he argues that Claimant's condition falls in the autism spectrum, most likely as Asperger's Syndrome. He points to Claimant's documented social and communications skills deficits. Claimant prefers to be by himself and has displayed aggressive behaviors toward his peers. He also points to Claimant's obsession with videogames and comic books, which prevent him from attending to personal hygiene and other daily living tasks.

It is noted that no mental health professional has issued a diagnosis of autism. Twitchell obtained a mildly elevated score in the CARS, observed certain behaviors consistent with Asperger's Syndrome, and suggested further study. Dr. Doi performed such additional analysis. She not only utilized a recognized assessment tool, the ADOS, but also interviewed Claimant and reviewed prior written reports. Despite the reported behaviors, Dr. Doi concluded that Claimant was not autistic. Her opinion is persuasive and supported by the record evidence.

6. Drs. Wolf and Doi performed extensive evaluations. They examined Claimant's behaviors, communication delays, and socialization deficits, and independently concluded that Claimant's emotional problems better explained his behaviors and deficits. Dr. Langenbacher agreed with their analysis. Their opinions have not been controverted and are persuasive.

7. By reason of the foregoing, Claimant does not have a developmental disability as defined in the Lanterman Act.

#### ORDER

Claimant's appeal is denied.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.